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10/043,908	01/11/2002	Robert Russo	2103461-991100	7256

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EXAMINER
SMALLEY, JAMES N

ART UNIT	PAPER NUMBER
3727	

DATE MAILED: 09/24/2003

11

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/043,908	RUSSO ET AL.
	Examiner	Art Unit
	James N Smalley	3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 08 September 2003.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 2-13, 17-27 and 31-54 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) 2-8, 20-23 and 33-54 is/are allowed.

6) Claim(s) 9-13, 17-19, 24-27 and 31-32 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### ***Response to Amendment***

1. The finality of the previous action has been withdrawn; however, in view of new grounds of rejection, this action is final. Allowance of claims 9-13, 17-19, 24-27 and 31-32 is withdrawn on new grounds of rejection.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 24 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 24 recites the limitation, "drinking hole." There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 9-11, 18-19, 24-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Waller US 6,431,390.

### ***Limitations of Claim 9***

The coffee lid disclosed by Waller '390 has a top wall (10) with a generally circular periphery and annular sidewall (28) depending therefrom. Drink opening (60) has a regulator valve formed underneath including a first sidewall that terminates in a bottom wall. These elements are not numbered, but can be clearly seen in figs. 1 and 2. The first sidewall has a plurality of apertures (20) that are formed in an opposing manner.

The lid further includes a wave breaker recess (54) having a downwardly extending sidewall. The sidewall has a first portion facing toward a center of the top wall and toward the wave breaker recess, and a second portion facing away from the center and away from the wave-breaker recess.

Examiner notes the claim limitation, "facing," is broad and does not limit any structure to read over the prior art teaching of Waller '390. In the Specification of the present application, no definition for the word, "facing," can be found. Further, the claims use, "toward," and, "away," which imply general directions. Unless further limited, a sidewall portion – in the present case, either of the two elongated, circumferentially oriented sidewall portions of the regulator valve of Waller '390 – have a front and back side, which face towards opposite directions. Thus, in interpreting the structure of the wave breaker recess of Waller '390, either of the elongated sidewall portions at one time, face both the center, and the wave-breaker recess. Arbitrarily selecting either one as the first and the other as the second meet the claim limitation.

#### ***Limitations of dependant claims of claim 9***

**Claim 10.** The first portion is the long sidewall of the recess located next to the drink opening, in fig. 1. The first portion forms a, "channel," between itself and the far diametrically opposite annular sidewall, and the regulator valve is disposed therebetween.

**Claim 11.** The second portion is the long sidewall of the recess, opposite the first sidewall portion, and is concave or convex, depending on which frame of reference is chosen – from within the recess or from outside the recess.

#### ***Limitations of Claim 18***

The coffee lid disclosed by Waller '390 has a top wall (10) with a generally circular periphery and annular sidewall (28) depending therefrom. Drink opening (60) is formed adjacent the periphery.

The lid further includes a wave breaker recess (54) having a downwardly extending sidewall. The sidewall has a first portion facing toward the drinking opening, and a second portion facing away from the drinking opening.

Examiner notes the claim limitation, "facing," is broad and does not limit any structure to read over the prior art teaching of Waller '390.

Further regarding the limitation of the recess sidewall second portion extending across, "a center portion of the top wall," Examiner notes the limitation, "a center portion," can comprise the entire top surface of the lid. While it appears the applicant intends to describe the second portion extending through the center point of the circular lid, "a center portion," does not limit to this location only.

The lid has a regulator valve formed underneath including a first sidewall that terminates in a bottom wall. These elements are not numbered, but can be clearly seen in figs. 1 and 2. The first sidewall has a plurality of apertures (20) that are formed in an opposing manner.

***Limitations of dependant claims of claim 18***

**Claim 19.** The plurality of apertures in the first sidewall portion are positioned in an opposing manner.

**Claim 24.** The apertures are smaller than the drinking hole.

**Claim 25.** The drinking opening is formed in the top wall.

**Claim 26.** The annular recess is (32).

**Claim 27.** The wave breaker recess (54) extends downward further than the regulator valve (60), as can be clearly seen in fig. 2.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 12-13, 17 and 31-32 rejected under 35 U.S.C. 103(a) as being unpatentable over Waller US 6,431,390 in view of Khafizov US 6,079,588.

***Limitations of claim 12 disclosed by Waller '390***

The coffee lid disclosed by Waller '390 has a top wall (10) with a generally circular periphery and annular sidewall (28) depending therefrom. Drink opening (60) has a regulator valve formed underneath including a first sidewall that terminates in a bottom wall. These elements are not numbered, but can be clearly seen in figs. 1 and 2. The first sidewall has a plurality of apertures (20) that are formed in an opposing manner.

The lid further includes a wave breaker recess (54) having a downwardly extending sidewall. The sidewall has a first portion facing toward the regulator valve and a second portion facing away from the regulator valve. The first portion is the long sidewall of the recess located next to the drink opening, in fig. 1. The second portion is the opposite long sidewall of the recess, and is non-linear. The first portion forms a, "channel," between itself and the far diametrically opposite annular sidewall, and the regulator valve is disposed therebetween.

***Limitations of claim 17 disclosed by Waller '390***

The coffee lid disclosed by Waller '390 has a top wall (10) with a generally circular periphery, annular sidewall (28) depending therefrom, and drink opening (60).

The lid further includes a wave breaker recess (54) having a downwardly extending sidewall. The sidewall has a first portion facing toward the regulator valve and a second portion facing away from the regulator valve. The first portion is the long sidewall of the recess located next to the drink opening, in fig. 1. The second portion is the opposite long sidewall of the recess, and is non-linear. The first portion forms a, "channel," between itself and the far diametrically opposite annular sidewall, and the regulator valve is disposed therebetween.

***Limitations of claim 31 disclosed by Waller '390***

The coffee lid disclosed by Waller '390 has a top wall (10) with a generally circular periphery and annular sidewall (28) depending therefrom. Drink opening (60) has a regulator valve formed underneath

including a first sidewall. These elements are not numbered, but can be clearly seen in figs. 1 and 2.

The first sidewall has a plurality of apertures (20) that are formed in an opposing manner.

The lid further includes a wave breaker recess (54) having a downwardly extending sidewall. The sidewall has a first portion facing toward the regulator valve and a second portion facing away from the regulator valve. The first portion is the long sidewall of the recess located next to the drink opening, in fig.

1. The second portion is the opposite long sidewall of the recess, and is non-linear. The first portion forms a, "channel," between itself and the far diametrically opposite annular sidewall, and the regulator valve is disposed therebetween.

***Limitations of claims 12, 17, and 31 disclosed by Khafizov '588***

Waller '390 does not disclose a plurality of inhibitor recesses formed in the top wall, downwardly extending into the channel for blocking waves of the liquid traveling along the channel.

The lid of Khafizov '588 discloses inhibitor recesses (20), formed between ribs (30). Further, Khafizov '588 discloses, in col. 3, lines 1-2, that it is well known to employ ribs (30) to reinforce the cover.

By employing the recesses (20) disclosed in Khafizov '588, on the lid of Waller '390, ribs (30) are inherently created, which invariably provide the benefit of splash inhibition.

***Obvious Step***

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the top surface of the lid disclosed by Waller '390, forming ribs (30) by providing recesses (20), so as to obtain the benefit of reinforcement of the lid, as disclosed in the teachings of Khafizov '588.

**Claim 13.** The wave breaker recess (54) extends downwardly from the periphery further than the regulator valve (20), as best seen in Waller '390, fig. 2.

**Claim 32.** The wave breaker recess (54) extends downwardly from the periphery further than the regulator valve (20), as best seen in Waller '390, fig. 2.

***Allowable Subject Matter***

8. Claims 2-8, 20-23 and 33-54 are allowed.
9. The following is a statement of reasons for the indication of allowable subject matter:

**Claims 2, 20, 33 and 36:** The claims all contain limitations for a second hole and second sidewall structure in the floor of the first bottom wall of the regulator valve. Waller '390 does not teach this structure and the Examiner has failed to located any applicable prior art.

**Claim 46 and 50:** The claims read over Waller '390 because the reference does not show a recess sidewall portion disposed between a center of the top surface and the drinking opening.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers

Art Unit: 3727

or other general questions should be directed to Tech Center 3700 Customer Service at (703) 306-5648, email [CustomerService3700@uspto.gov](mailto:CustomerService3700@uspto.gov) .

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N Smalley whose telephone number is (703) 605-4670. The examiner can normally be reached on M-Th 8-5:30, Alternate Fri 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

Other helpful telephone numbers are listed for applicant's benefit.

Allowed Files & Publication	(703) 305-8322
Assignment Branch	(703) 308-9287
Certificates of Correction	(703) 305-8309
Drawing Corrections/Draftsman	(703) 305-8404/8335
Fee Increase Questions	(703) 305-5125
Intellectual Property Questions	(703) 305-8217
Petitions/Special Programs	(703) 305-9282
Terminal Disclaimers	(703) 305-8408

If the information desired is not provided above, or has been changed, please do not call the examiner (this is the latest information provided to him) but the general information help line below.

Information Help line	1-800-786-9199
Internet PTO-Home Page	<a href="http://www.uspto.gov/">http://www.uspto.gov/</a>

Jns  
17 September 2003

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